THE
RECONSTRUCTIONIST

DEDICATED TO THE ADVANCEMENT OF JUDAISM AS A RELIGIOUS CIVILIZATION, TO THE UPBUILDING OF ISRAEL'S ANCIENT HOMELAND, AND TO THE FURTHERANCE OF UNIVERSAL FREEDOM, JUSTICE AND PEACE.

Vol. III. April 2, 1937 Nisan 21, 5697 No. 4.

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By Boaz Cohen

(Concluded)

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In THE RECONSTRUCTIONIST of March 10, 1937—Nisan 7, 5697 an article entitled "The Plight of the Jews" was mistakenly ascribed to Boaz Cohen. This article was written by Paul Reich, of Norfolk, Va. We regret the error and call the attention of our readers to this correction.

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EDITORIALS

Enroll Masses of Zionist Members

WHAT the cause of Zionism needs most today is the moral support of vast numbers of Jews. To be sure, the various funds must continue to appeal for contributions; the Jewish National Fund and the Keren Hayesod are basic to the upbuilding of Palestine. But at the moment, numerical strength is the paramount issue. In the face of widespread opposition to Zionist aspirations from the radical elements and even the so-called liberal groups, in the face of the possibilities of an adverse report from the Royal Commission, in the face of persistent terrorism in Palestine, the voice of our people must be raised so that, even in the turmoil of international affairs, we may be heard above the din.

The Zionist Organization of America is the only organization today which can corral those numbers necessary to impress the world with our determination to re-establish the Homeland. The Zionist Organization, therefore, must increase its membership manifold. It is not enough that thousands upon thousands of American Jews sympathize, passively, with the aims of the Zionist movement. The actual membership in the Organization is what counts in the process of moral suasion; and that membership today is pitifully small. How can it be raised to a hundred thousand, to half a million?

A highly commendable plan is afoot to enlist the men and women affiliated with congregations throughout the land into the ranks of the Zionist Organization by including membership in the Z.O.A. as part of congregational membership. Instead of charging members the usual annual fee, congregations should increase that fee by the amount of the dues in the Z. O. A. In this manner, tens of thousands of additional members could be procured. And it is right that congregations should make the cause of Zionism coordinate with their own. Zionism has brought new life into diaspora Judaism. Without Palestine rebuilt, the old shibolleths, the old routines, the old educational programs would still be in force, and the synagogue would be a sterile and lifeless institution. With Palestine, the synagogues and the schools have gained new vigor; they have established new and fresh objectives.

It is to the everlasting regret of Jews interested in Jewish religion and Jewish life that Zionism did not emerge upon the scene through the instrumentality of the "synagogue Jews." The pioneers in the movement were not identified with institutional Jewish religion. And although the

Conservative groups lent their sympathy and support soon after the inauguration of the Zionist movement, large sections of American Jewry only belatedly realized the far reaching significance of the modern restoration. Now the synagogues of America have their opportunity to make amends.

The occasion is indeed an appropriate one for such amends, from several points of view. As we have pointed out, the need is great for speaking with the voice of millions. Secondly, the repentant mood is prevalent. The Central Conference of American Rabbis, in presenting to their latest convention a set of "Guiding Principles," included the following in their paragraph on Palestine: "(We) affirm the obligation of all Jewry to aid in the upbuilding of Palestine as a homeland in making it not only a haven for the oppressed but also a center of Jewish cultural and spiritual life." If the Reformists, who for years opposed Zionism, now regard its program as an "obligation" upon all their adherents, the time has surely come for members of all synagogue groups to take positive steps toward assuming that same obligation.

We therefore heartily recommend that the plan be adopted far and wide, in all American congregations. If it is, the world will quickly learn that *all* Israel wants Palestine rebuilt, a fact that the world will not find it quite so easy to ignore.

The Jewish Farmer

THE Jewish Agricultural Society has just released its annual report. It is justly proud of the growth of the Jewish farm population as a result of the Society's work from 216 families in 1900 to 100,000 in 1937. 11,997 farm loans aggregating $7,392,000 have been granted to Jewish farmers in forty states by a system of secondary mortgage loans, loans allegedly made for service and not for profit. Countless Jews who wish to go into farming are aided and guided. The farmers themselves are helped through the Education and Extension departments which conduct visits, field days, meetings, demonstrations, schools, and conferences. It publishes a magazine, *The Jewish Farmer.* 18,009 young men have been placed on farms in various capacities. In concluding the report, Dr. Gabriel Davidson, the general manager of the Society, says that all these services, as valuable as they are, are but means toward a larger end, and that larger end is to get an ever-growing body of Jews living on farmsteads and tilling the soil.

It is good to know that the Jewish Agricultural Society does have a larger end in view which gives aim and direction to its work, but we feel that the end the Society has set itself is not an end but a beginning. It is not enough to get an ever-growing body of Jews as farmers. We want to have some assurance that when Jews get on the farms they will be able to make a go of farming and like it. The 11,997 farm loans may be an indication of the good work of the Society, but it may also be an indication of the distress of the Jewish farmer, who must be given constant and continuous aid to survive.

The country is now agitated by the plight of millions of farm tenants and sharecroppers. A government commission recently issued a report based on a long study of the problem of farm tenancy, and its recommendations are now being studied by a Congressional committee with a view to the adoption of a permanent government policy which would solve once and for all this perplexing problem. The mild program of financial assistance being carried out by the government is even now being met by stout resistance on the part of the big planters. One wonders what they would do if a really vigorous attack were made on the problem of farm tenancy.

The plight of the Jewish farmer may not be as desperate as that of the increasing army of farm tenants in the South, but basically his problem is the same as theirs. The Jewish farmer is an independent farmer, and in our present economic

system, the small independent farmer cannot maintain himself and tends to disappear. The land passes into the hands of fewer and fewer owners, with banks and insurance companies often playing the role of land operators.

At best the Resettlement Administration has envisaged the problem of farm tenancy as one of replacing the displaced farmers on land. To do this adequately would cost the government fifteen billion dollars. It is foolhardy to believe the government will even be permitted to spend such a sum, but even if it were, the expenditure of such a sum would still not solve the problem. The resettled farmer would still have to compete with the large planter, with his extensive acres, his rich lands, his superior methods of cultivation. Given a drought or two, and the resettled farmers will be back as farm tenants and the problem once more with us. It is no wonder that more and more serious students of the problem have come to the conclusion that large-scale cooperative ventures which would permit diversification of crops and the full use of mechanized aid, offer the only solution to the problem of farm-tenancy.

The type of farming done by the Jewish farmer is not similar to that of the Southern farmers. His situation is in many respects different from that of non-Jewish farmers, particularly in the South. But as a small independent farmer he is bound to be subject to the same economic forces, to the same ruthless competition of big farmers and big companies, whether he has a dairy farm, a poultry farm, or a cotton plantation.

The report of the Jewish Agricultural Society tells us only what it has done to help the Jewish farmer; it tells us nothing of his desperate struggles to survive in the face of the ravages of the depression and of the competition of large-scale farms. It may be a good thing for greater numbers of American Jews to become farmers. But if we decide that Jews should be encouraged to go on farms, we ought to see that they have a chance to survive under our present economic system. And they will not survive unless they organize in large-scale cooperatives.

If the Jewish Agricultural Society has money at its disposal and wants to help the Jewish farmer, it should try to experiment with Jewish cooperative farms, or some other scheme which would enable the Jewish farmer to cope adequately with the problems of farming under the present economic system.

The Passover Exodus

FOR a large number of American Jews, the festival that commemorates the exodus of the Israelites from Egypt has become the occasion for *their* exodus from their homes. They pack their bags and install themselves in hotels for the period of the holiday. If a spark of Jewish loyalty persists in them, they choose a hotel that conducts *seder* and religious services. From the point of view of Jewish life as a whole, this practice is a serious menace.

Let us concede the extenuating circumstances. Passover corresponds very often to the Easter vacations from school, and hence constitutes a convenient occasion for taking the children away for vacation. Even the hard working fathers are entitled to a few days in the country. Granted, furthermore, that the family finds itself in an atmosphere of Jewish observance. We question, however, whether the total effect is not detrimental to the establishment of permanent Jewish institutional life in our country.

"Hotel Judaism" nourishes evils. First: those who practise it shun their responsibility toward the Synagogue. By not attending service with a duly-constituted congregation, they weaken that institution's status and financial standing. It is true, of course, that most synagogues depend upon the High Holidays for the bulk of their income; but the exodus is not confined to Passover. Unless Rosh Ha-Shanah and Yom Kippur fall very late, the devotees of "Hotel Judaism" stay away from the city until after those holidays,

when they know they will be embarrassed into contributing to the support of the Synagogue.

A second evil arising from the Passover exodus is the weakening of the family as a humanizing force. The Jewish people is unique in that it celebrates the birth of its nationhood most characteristically at the family board; the *seder* is, after all, the distinctive Passover rite. Underlying the *seder* is the basic assumption that the parents' function is to transmit the traditions of the folk to the new generation. National traditions, fostered in the home, mould the personality of the child, initiate him into the knowledge of his past which renders him a civilized Jew. Now, the whole purpose of the *seder* is lost when it enters the field of mass production. The *seder* is reduced to the merest formality; lip service is rendered to the tradition, and the basic significance is lost. With the family unit dissolved in a larger mass of hotel guests, the adherents of "Hotel Judaism" probably approach the *seder* with only the thought of food, and leave it with no food for thought.

A third evil is this: Hotels, as most people realize, are businesses; their owners are not in business for fun. They are, therefore, concerned with providing their guests with religious trappings at the lowest possible cost to themselves. The hotels constitute, therefore, the happy hunting grounds of all kinds of free lance and unauthorized rabbis who are either unable or unwilling to assume posts in permanent congregations. Nothing so encourages the deteriorating practice of unqualified functionaries in Jewish life as does "Hotel Judaism."

It is, of course, a fact that the evils are nurtured by that class in Jewry which can afford to go away for the holidays; but unfortunately it is that very middle class upon which Jewish life today so greatly depends. It is they who, for the most part, are not infected with the virus of assimilationism and who, on the other hand, have the means for maintaining Jewish life. If they continue to abandon the Synagogue, weaken Jewish family life and encourage anarchy in the rabbinate, Jewish life as a whole will have little to thank them for, even though they do choose hotels that are kosher and that hold *seder*. "Hotel Judaism" is a chronic ill which those who seek the reconstruction of Jewish life must energetically combat.

A Confession*

By Jessie Sampter

I.

EVERY evening they kindled the lights of *Hanukkah* over the radio. A new thing has come into the world. "Give ear to the voice of Jerusalem," says the young woman announcer in Hebrew; then follows a short pause; then a man's bass voice chants the blessing—for signs and wonders—and then the choir sings: *"Mo-oz-Zur,"* and after that, for half an hour or more, a *Hanukkah program,* songs new and old, recitations and lectures.

Does the radio anywhere else in the world transmit the *Hanukkah* festival?

Our own candles were still burning when we gathered round the radio. We are a collective socialist labor group, a village of 700 souls; we do not say the blessings over the lamp, but we kindle it. Our only public worship is in the little synagogue of the "parents," the old people who are not technically members of our group, and none but the old people attend. Still, the Jewish holidays are

*Part Two of Miss Sampter's "Confession" will appear in the next issue. Miss Jessie Sampter resides at Gevaat Brenner, near Rehobot, in Palestine.

not anywhere in Palestine, and surely nowhere else in the world, celebrated with more warmth and interest. We are often outspoken in opposition to organized religion, and a good deal of youthful rebellion takes crude and impertinent forms. Views vary greatly and actions in this respect are free. Yet one of the burning problems and one of the most responsible tasks of the Culture Committee is the celebration of the Jewish holidays. Our school program is built around it. Our electrician put up an electric *Menorah* by the school house for *Hanukkah;* the children in kindergarten made *Hanukkah* lamps for their parents' room; and each section of youth except the infants had its own special celebration. There were plays, feasts and gifts; and all the children, carrying candles, marched through and round our village the first night, and kindled torches round the terraces of their houses —the children's houses of the Commune.

Then comes *Hamisha Asar Bishevat,* with digging and tree planting by the children in court and garden, with songs and with wreaths and garlands of flowers. It happens, however, that the planting is done on a Saturday, so that the parents who work may participate with their children. Next is *Purim* which is celebrated chiefly by the little ones. Since Tel-Aviv has become the carnival city, some of us go up there each year for the celebration; but with our disdain of city life and of waste, show and flippancy, there is a tendency to turn up noses at Purim. Only the children mask. But Passover is the queen of festivals. Weeks in advance the preparations begin; above all, work on the *Haggadah* which is changed from year to year. For the past two years we published—in illustrated mimeograph—our own *Haggadah.* The artist who made the designs—one of our members—did a copy in elaborate color for our library archives, and others, with bright colored covers, were sent abroad to friends of our movement. Last year already we were imitated by other labor groups who issued their own *Haggadot.* The first few pages last year were devoted to the traditional *Haggadah* with most of the blessings and some of the rationalizations left out. The children's question was there for them to ask, and the answer was there with all its quaint and lovely turns of speech and song. Then followed further exoduses, further *"Aliot"* from Babylon and Spain, through the *Hassidim* and the *Maskilim* and the *Halutzim* to the last ship-load of children from Germany, boys and girls of fifteen and sixteen, who were now to take part with us in their first *Seder* in the Land of Israel. The booklet was a collection of prose and poetry, from Nehemiah and Isaiah to Brenner and Shlonsky. When the great day arrived, our dining hall was decorated and arranged—with boards for extra tables and benches—to accommodate ourselves and about a hundred guests and all but our tiniest children. The little ones marched in dressed in white, garlanded with flowers, singing a spring song. Music, song and recitation, such as no doubt made the text live in its own young days, gave color to the long story. Though *Matzoh* kept its monopoly on the *Seder* table, during the week bread appeared by its side. We are ostentatiously unorthodox. On *Lag B'Omer* a bonfire crowns our highest hill and an ecstatic *Hora* dance with chanting and stamping till dawn, and monstrous shadows gesticulating round the red flames, resembles the religious ecstasy of the dancers at Meron.

Shabuot has become in Palestine a festival of offerings to the Jewish National Fund, with its central celebration in Haifa, to which all the Emek flows, even as Tel-Aviv has become the City of *Purim.* But each city, village and group has its own offerings which it collects in its own way. In our dining hall is erected an altar on which stands a gigantic blue and white National Fund Box made of cardboard. The children are decked with flowers and drive about our farm in carts and lorries to each of its branches to collect gifts for the Jewish National Fund. The field offers a sheaf of grain, the bee-hives a jar

of honey, the stable a jug of milk, the gardens both flowers and vegetables, the orchards fruits and the poultry house a hen and eggs. All these are brought in baskets and piled on the altar, to the jubilant singing of the comrades assembled in the dining hall. Then, since we cannot auction off the gifts as in other places because we are a collective without private money, the kitchen receives this produce and its value is paid to the Jewish National Fund. You may be sure it is not undervalued. But the rabbis in Jerusalem and some of the supporters of the Jewish National Fund are shocked because our children ride about the farm on *Shabuot*.

There are very few who fast either on *Tisha B'Ab* or on *Yom Kippur*. But the former does not pass without due mention and historic celebration that strikes an echo on the anvil of our daily life. As for the latter, it is one of our problems. New Year's day is the actual beginning of our year, fiscal and organizational. During the high holy month we have a series of annual meetings which last until long after *Sukkot—Sukkot* when the children and the old people each have their *Sukkah* and those of the middle generation are a hanging bridge between them—and at this time we not only elect all our Committees, our Government, and hear their financial reports and decide on our new budget, but we sit in sessions far into the night in profound and humble self-criticism, *Heshbon* = accounts, *Heshbon Hanefesh* = searching our conduct, to take account of it. *Yom Kippur* is a natural consequence of beginning a new year, a new cycle or annual day. How did we spend this last year, with profit or loss, financially and ethically? Ethically means socially. I doubt whether the habit of group self-criticism at this time of year, of meetings to deal with social problems and of very serious mock-trials of our form of life, grew up consciously as a substitute for the *Slihot* of our fathers. I think it was rather, like the ancient custom, a natural consequence of Jewish earnestness in entering upon a New Year.

Yet *Yom Kippur* is for us a conscious problem because we have not yet found a suitable form of celebration for this day. It is an empty holiday. The Sabbaths, too, face us as a problem. We are aware that, having discarded the traditional Sabbath, what we have substituted for it is not yet satisfying to us. Time and again, at meetings of Culture Committees, local or central, this question arises. The religion of work, labor, *Avodah*—has filled the six week-days; the perfect discipline of our Distribution of Work Committee is the pivot upon which our society turns. Young people from middle-class and wealthy homes have sacrificed careerism and intellectualism gladly, ecstatically on the altar of work. With our own hands we will rebuild the waste places of our land. Literally, painfully. By the sweat of our brows mixed with the damp mud in which we stand to water orange groves. Spraying newly set cement wtih a hose. It is most actually, frightfully Biblical. For six days it is very good. But on the seventh?

Friday evening there is generally a concert, or some celebration. Special festivals, such as anniversaries of our founding and other less local events which by chance are celebrated here, are saved for Friday evening and Saturday and are almost invariably opened by a concert in the evening. There is an antagonism to lectures on Friday night. Music is wanted. And if for any reason the concert is not forthcoming, or after the concert is over, the comrades gather in groups and sing. These songs are Hebrew songs, and many of them, curiously, are *Hassidic* melodies or old religious songs, and Bible texts set to music. As a prayer these young people would refuse to say them. They do not pray. But they sing; and as the song develops its own ecstasy, they rise to their feet and begin to dance in a circle arm in arm to a rhythmic shout, circle within circle until the walls shake and the air vomits dust, and the tom-tom of stamping feet and tuneless voices becomes an orgy of fury and sound. There is beauty in

what prompts it; but there is no beauty in this final frenzy. It uses up youthful energy still aflame after a week of hard work, and except for the dust it is probably wholesome; but it leaves one's heart hungry for a lovelier way of drawing forth the bottomless sources of human devotion.

In the dining hall, white cloths appear on the oil-cloth covered tables for the Sabbath eve meal, and a glass of freshly cut flowers stands on each table. In the children's houses the Sabbath is received with appropriate song and a holiday spirit. Sabbath clothes are emphasized; and the day, spent with their parents, is set apart from other days.

Saturday is spent by the comrades in leisure with little plan. Sometimes, on occasions, there are conventions or celebrations over the week-end, with many guests and speakers; almost weekly, exhibitions of art, industry or historical subjects are open in the Culture House; there are athletic meets and committee meetings and sporadically lectures or concerts. Small groups go on outings together. Each member, as a matter of course, has to take his turn at house work one Sabbath in five, in kitchen, dining room, children's house, or wherever work cannot be stopped. A feeling prevails that it is not good to plan any regular activity for Saturdays. They should be open and free. Yet this fluidity of feeling leaves the day empty for many who look to the group to provide a social stimulus for study or recreation. And in our tense economic state—with too few workers to support us and too few houses for them to live in —the temptation to use our freedom for most urgent work at home is not to be resisted. Our Culture House was built on Saturdays by volunteer labor. Local street and house cleaning are undertaken then, for lack of other time, and even urgent field tasks may be finished. All such work is nominally volunteer. A heavy fall of oranges in a storm necessitated the making of marmalade in large quantities. An announcement was issued asking for volunteers to peel oranges for two hours on Saturday. Twenty-five thousand oranges were peeled in this way. The result was something like a husking bee or a candy pull.

A deep lack is felt, a vacuum, on such days as *Yom Kippur* and on the Sabbath. There is a longing and a seeking for satisfying ways of meeting and of filling an unspoken inexpressible want. Yet though this feeling exists and is known, no attempt so far at *Oneg Shabbat* or at other regular meetings on the Sabbath has succeeded. Within the last three weeks we are experimenting again, a group in *Agadah* in the morning, a meeting to discuss home problems at noon, and music and a talk after the "third meal." Attendance has been good these three times.

Personal freedom is greatly limited by economic and community necessities but by nothing else. Freedom of movement is confined within the limits of possible vacations and of free cash for trips. The Distribution of Work Committee can force a comrade—with alternative of expulsion from the group—to accept a job that is assigned to him. One sent on a mission abroad or to some other urgent task outside the group feels the same compulsion. In fact, however, personal wishes are considered as far as they are not glaringly inconsistent with the public welfare. But in personal matters that do not infringe on group necessities, freedom is absolute. Criticism is unlimited and has printed organs of expression. In sex as in religion, personal freedom is complete, except as it threatens the freedom of another, and the only coercion is that of public opinion, which is strong but takes no measures except gossip. Official marriage is not required or considered necessary, but most couples eventually marry. A couple asks for a room or tent together, and the moving in is celebrated with flowers, goodies and a reception. Couples do not ask for a room until their relation presages permanence, for changes have unpleasant consequences in the form of gossip. Sensitiveness to these flea bites is

so great that much personal reserve has been developed. Confiding is rare. Outside of these permanent unions, there is some sexual intercourse which can hardly be called promiscuity, being certainly much less than that in the usual city society; and often it is clean youthful adventure or experimentation which leaves no stain of remorse behind it. Prostitution or any form of sexual coercion is unthinkable among us. Taking into consideration the varieties of human nature and the unique needs of each, I should consider the situation healthy. Life and work are far too hard to permit of dissipation.

Family irregularities occur and are accepted without interference. Gossip soon subsides. Among our 700 inhabitants there is one woman with a child whose father—not of our group—is unknown, one woman who has two husbands and a child by each, three women, with children, who have left their husbands and now have a child by another mate. Curiously, there is no case as yet of a father who has children with different mothers. I think this record of so-called irregularities is not above that of other social groups of this size. Birth-control and abortion are practised under medical advice. Our birth-rate is high. We have a hundred children all under ten years of age; nearly a hundred of our young people are under marriageable age—between fifteen and nineteen—and we have about fifty old people.

The children, living under separate roofs, are attached to their parents who take them for walks and put them to bed each evening and who spend the whole of Sabbaths and of festivals with them. But a completely new family setting and outlook are created. The altar of the family table disappears. Jewish family life becomes a community affair, and the community's anxiety for its children has a distinctly Jewish character.

Hebrew is nominally our language and all public functions are carried on in it. Our children know no other. But as two-thirds of our comrades are immigrants from Germany who arrived within the last few years, there is a constant struggle for the language. Most of our cultural work consists of Hebrew language lessons or courses in Bible and modern Hebrew literature. Candidates are not admitted to full membership until they can pass a language test, which is based not so much on actual knowledge as on proof that they are making the effort to learn and use the Hebrew language.

We are in a melting-pot that boils hard. Bubbles and foam still make it difficult to see what is going on in the depths. The education of our children is carried on by young people whose own minds are seething with uncertainties and contradictions. We flew the red flag over our buildings on May first and were justly criticized for not flying the blue and white flag. Now we use both. The blue and white Jewish National Fund box hangs in our dining hall and our daily lives are planned and cramped by the needs for Jewish immigration. We are socialists and nationalists. That we be socialists and Zionists, though not necessarily Party members, is the one demand to which we must subscribe to become comrades. Yet to most unthinking intellectuals these two demands contradict each other. Their unity is implied in Judaism, in the whole Jewish habit of approach to life. "If I am not for myself, who will be for me; but if I am for myself alone, what am I?" Hillel knew how to define Judaism in aphorisms. "And if not now, when?" It is characteristic that these words were among the first to be sung, as music for the *Hora* dance, by our pioneer ecstatics. To embody one's faith, to do daily, hourly, momently, the will of God; that necessity for realization which is characteristic of the Jew, caused our fathers to build a fence around the Law and to keep it there and causes us to take our socialism so seriously that we must live it now.

Yet this fluid state of Jewish creativeness, this melting up of laws and customs in the heat of the struggle for a good Jew-

ish life in Palestine, is very different from the discussions and the needs of Jews who are resolved to live a good Jewish life wherever they be. For the present the influence and relationship to them is peripheral, not central. They cannot directly solve our problems, nor we theirs. I do believe that just these radical socialist groups, and not any of the less daring forms of Jewish settlement in Palestine, hold in them the fire to forge a Jewish future, a prophetic revolution. We are the sons of the Prophets. But the burning point where there will be interpenetration has not yet been kindled. Sons of prophets are not enough; and the new prophets are not yet, neither here nor in America nor anywhere.

The Interpretation of Jewish Law*

By Boaz Cohen

(*Concluded*)

III

IN post-Talmudic times the problem of interpretation assumed an entirely different aspect. For what the Bible was to the Tannaim and the Mishna to the Amoraim, the Talmud became to the Geonim and their successors. It was the Geonim who by virtue of their prestige established the preeminence of the Talmud in every matter affecting law and ritual. Henceforth the Talmud became the indisputable authority in Jewish life [47] and was never challenged, except by the Karaites. The hermeneutical rules developed by the Tannaim and sparingly used by the Amoraim fell entirely into desuetude now, for the Talmud offered a vast amount of legal materials upon which the scholars could work.

With the completion of the Talmud, Jewish law reached its maturity. While the gulf between Biblical and Tannaitic legislation is enormous and the discrepancies in *halakah* between the Tannaim and the Amoraim are many and significant, the departures of the Geonim in their *Takkanot* and interpretations are, comparatively speaking, slight in importance. We do not mean to imply that the redaction of the Talmud arrested the development of Jewish law; by no means, but rather that the Talmud by the fullness of its legislation and by the importance of its own adjustments of Palestinian Law to Babylonian conditions has slowed down the pace of development of Jewish law and largely determined its distinguishing characteristics.

Following in the footsteps of the Geonim, Abraham ibnBaud, Maimonides, R. Asher, R. Solomon Luria and Elijah Vilna [48] confirmed the primacy of Talmudic authority. The purpose of codification of the Law was largely a matter of expediency. The Talmud, itself being no code, did not contain any systematic arrangement of the *halakah* and even the greatest of scholars sometimes had difficulty in finding the Law. In addition, the codes embodied some innovations in the way of local custom in conformity with current practice. In theory, the codifiers were merely expounders of Talmudic law, but not ultimate authorities in themselves. Thus R. Asher rebukes certain scholars who decided questions of Law solely upon the basis of the Mishneh Torah of Maimonides without recourse to the Talmud. As a matter of fact, many codifiers were accepted as actual authorities in their respective countries, whereas some of the greater *halakists* enjoyed this recognition even beyond the borders of the land of their abode. Not only in Egypt, but even in Syria, Yemen, Persia and the Island of Rhodes did scholars

*The first part of Dr. Cohen's article appeared in Vol. III, No. 3.

strictly adhere to the Mishneh Torah in giving decisions on Jewish law.[49] At a later period, the Shulhan Aruk, contrary to the intent of its author, and after considerable opposition on the part of a great many scholars, was ultimately established as a firm authority after it had been brought into conformity with Polish custom by the glosses of R. Moses Isserles. R. Zewi Hirsh Eisenstadt[50] remarks that although Samuel Edels once objected to deciding according to the Shulhan Aruk, it is proper to do so now, inasmuch as it is supplemented by the commentaries of the Shak, Taz and the Magen Abraham.

It was a cheap intellectual pastime of the Reformists of the nineteenth century to rail at the Shulhan Aruk which they accused of straitjacketing Jewish life. This is far from being true, for the commentators allowed themselves considerable freedom in interpretation. Neither would the Shulhan Aruk ever have enjoyed the prestige it did, had it not been for the fact that it did answer the needs of the time. Codification of the Law does not check development, it merely conceals it. Looking at the matter historically, we must admit that the Shulhan Aruk with all its deficiencies is a remarkable handbook of Jewish law and as the work of one of the greatest Talmudists of all time it should carry all the weight that is commensurate with such an illustrious authority.

In the Middle Ages there was undoubtedly a tremendous reverence for the book per se to which undue authority was ascribed regardless of its author, and a host of customs and rites mentioned even in non-legal sources received the sanction of great authorities. Thus an inquiry was addressed to R. David ibn Zimra as to the origin of the custom to take off the teffilin before Musaf on Rosh Hodesh. The learned rabbi replied that he found no reference to this custom in the Talmud or in the codes available to him, but that it was mentioned in Sefer Elkanah. Accordingly, he followed the custom ever since he noticed it in that book. He then goes on to say that Elkanah is worthy that we take off our teffilin for his sake a quarter of an hour earlier.[51]

The Rabbis had to contend with many laws that were fast becoming obsolete. Of particular interest is the fact that Enoch ben Judah, a Bavarian rabbi of the seventeenth century, deplored the disregard of the prohibition of shaving in his country by the young men who justified it on the ground that it is permitted for unmarried men to remove their beard with a razor. The pious rabbi in his endeavor to put a stop to this flagrant violation of Biblical law, issued an order forbidding any one guilty of this misdemeanor to be called up to the Torah.[52]

How the change in the environment[53] affected the Rabbis' interpretation of the Law may be illustrated by the following. According to the Mishna, it is prohibited to derive any benefit from wine of Gentiles because it is presumed that it had been used for libation in idolatrous worship. Rashi[54] on the authority of the Geonim permitted one to derive benefit from all wine of Gentiles on the ground that libation is not a Christian practice, and moreover, they were not considered as idolaters. Maimonides took a similar stand in regard to the Muslims.[55]

When a new problem arose for which there was no precedent, the Rabbis sought to interpret the Law by means of analogy or derive it by logical reasoning from preexisting rules. A case in point is a question[56] that came up before Shneor Zalman, rabbi in Goldingen, Kurland in 1876. A man convicted of larceny was sentenced to imprisonment in Siberia. Thereupon the wife demanded a divorce, but the husband refused to grant it. The rabbi held that it was permitted to compel the husband to grant a bill of divorce on four grounds, for his imprisonment would entail non-support, forced absence from his home, failure to perform his marital duties and finally, inasmuch as he was guilty of moral turpitude, he was

in a legal sense worse than an apostate. In Russia under the old regime, where rabbinical jurisdiction in religious matters was recognized, the divorce could be granted as a forced *get*.[57]

In the responsa two principal methods of interpretation are represented. The historical method consists of the rabbi's finding the Law in the Talmud and tracing it throughout the *Posekim*. Or vice versa, he discusses first the explanations of the later *Posekim* and gradually goes back to the Talmud. A most remarkable historical presentation of the details of Jewish law is given by Karo in his commentary on the Tur.

The analytical method of interpretation found in the responsa constitutes the presentation of a detailed analysis of the general question raised by the inquiry before discussing the particular point at issue.

A number of compilations entitled *Kelale ha-Posekim*[58] contain precise definitions of legal terminology and deal with the principles of interpretation followed by the codifiers. Several of the most important rules only can be enumerated here. Thus R. Joseph Kolon asserts that we may not derive any laws by an independent interpretation of Scripture.[59] In case of conflicting views there were more or less accepted standards as to the relative importance of the various authorities. Thus the opinion of the Tosafists carried more weight than that of Maimonides. In general the Law was decided upon in accordance with the consensus of opinion of the authorities (*Haskomot ha-Posekim*). Karo informs us that in his compilation he considered Alfasi, Maimonides and R. Asher as the standard authorities and generally accepted as final any decision upon which two of the triumvirate agreed. This procedure was, however, criticized by R. Solomon Luria who maintained that the views of a preponderant number of scholars were weightier than the opinion of the two.

IV

What principles should guide us in interpreting Jewish Law today? Interpreting law presupposes a mental picture of what we are doing and why we are doing it. What is it that we do when we interpret law? To what authorities do we turn for guidance? To what extent are we influenced by them?; and in case of conflicting opinions how do we choose between them? Shall we be consistent in our principles? What shall be the nature of our interpretation? Shall it be supple or inflexible, liberal or literal, lenient or severe?

In order to answer these questions we need some philosophical thinking about Jewish law. For the analysis of the process of interpretation involves an exposition of the origin, nature, development and aim of law. These are problems in philosophy.

It is a fundamental doctrine of Judaism that our Law is divinely revealed. This teaching is by no means incongruent with the view that the final literary compilation of the Pentateuch occurred at the end of a long and gradual development. The legislators, the priests, the sages and prophets who helped to shape Israel's Law were all touched by the divine breath. But we need not assume any divine assistance in the work of redaction.[60] Only at a later time did the Rabbis and the Alexandrian Jews, doubtless under Platonic influence, and on the analogy of the heathen mantic, conceive of the doctrine of verbal inspiration of the entire Pentateuch. For us the scriptural law is the expression of the divine thought and purpose. To quote a modern religious thinker,[61] "Without pretending to define inspiration or determine the mystery of its operation, we may, I suppose, say what we mean is an influence which gave to those who received it a unique and extraordinary spiritual insight, enabling them thereby, without superseding or suppressing the human faculties, but rather using them as its instruments to declare in different degrees, and in accordance with the needs or circumstances of particular ages, or particular occasions, the mind and purpose of God."

Ours is an age primarily interested in historical research and comparative studies in which the investigation of the origin of institutions and laws plays a dominant role. Despite the fact that parallels to many rites and customs prescribed in Scripture may be found among other peoples,[62] we must not lose sight of the fact that the Biblical ceremonies and laws have been transformd by the inspired writers and endowed with such great spiritual meaning that they cannot but evoke in us feelings of veneration. "Human beings being what they are," says Balfour,[63] "no moral code can be effective which does not inspire in those who are asked to obey it, emotions of reverence, and that practically the capacity of any code to excite this or any other elevated emotion cannot be wholly independent of the origin from which those who accept that code suppose it to emanate."

When we say that scriptural law is eternal and immutable we do not imply that it is something fixed and settled and not subject to change or development.[64] It means that we cannot attempt deliberately to set up law or to promulgate new rules that cannot be derived from traditional law.[65] It is true, as was previously mentioned, that the Rabbis themselves instituted new ordinances and gave approval to certain customs that arose spontaneously among the people, but in no event would they allow an abrogation of Biblical law.

In a certain sense it is important to understand the goal of the Law. Law functions for the purpose of attaining certain ends. The aim of Jewish law is, as our ancients taught us, a means whereby the individual obtains physical and spiritual happiness. At the same time we recognize too that Jewish law has been the most conspicuous and efficient instrument for the preservation of Jewish society.

There is no need to labor the point that there is a widespread disregard of Jewish law in our country today, and what is even worse, there is a marked disrespect of our traditional rites and customs. The main problem that confronts us is: what should we do about it? There is one group who holds that all departures are dangerous, as that great Hungarian rabbi, Rabbi Moses Schreiber gracefully expressed it, "Innovations are Biblically forbidden." [66] They are content to believe that somehow matters will right themselves as they did in the past. This policy of laissez faire is not shared by another minority group who is convinced that the problems we must solve today are incomparably greater than those we had to contend with in the past. The solution of our problems due to changed intellectual temper, economic environment and social conditions is not to be attained by the slow and inadequate method of interpretion, which at best can only patch the fabric here and there. "What good are the Rabbis," averred some ancient skeptics, "they never permitted ravens, nor prohibited doves."[67] Accordingly, there must be a free setting up of new premises; and laws that do not meet with current approval should be declared null and void. In short, the problems must be met by pruning and pruning unsparingly all the dead branches of the tree of Judaism.

Then there is a third group who, I venture to believe, constitutes the majority. Fully cognizant of the sore plight of Jewish rites and ceremonies, this group maintains that not only is legislation contrary to Jewish tradition, but it is a perilous adventure. It clings to the time-honored method of interpretation. Frankly speaking, I am convinced that only through creative interpretation shall we be able to solve our present-day problems in the spirit of the great exponents of historical Judaism, such as Frankel, Graetz and Schechter.

What do we mean by interpretation? In modern times jurists have evolved many theories concerning the nature and function of interpretation,[68] but these need not detain us here. Suffice it to say that our chief difficulty today is not that the Law is vague and ambiguous and that its meaning must be determined. On the

contrary, in many cases the Law is quite definite and precise, but is out of harmony with modern life.

Before stating the principles that should guide us in interpreting law, we wish to set forth what are the ends we seek. For there is no wisdom in the choice of a path, unless we know whither the road leads. Our aim is to preserve as much as possible of the genuine Jewish law and custom as is compatible with modern conditions. The character of Jewish law and tradition as embodied in the Shulhan Aruk was well suited to the needs of the Jews who dwelled in the small towns of the ghetto, shut off from every intellectual and social intercourse with the outside world and engaged in petty business. The sudden influx of millions of Jews within a comparatively short time into an environment where they mixed freely with non-Jews, partook of modern education, became residents of large cities, has had a devastating effect upon Jewish observance. These are facts with which we must reckon, if we wish to rehabilitate traditional Judaism.

As guiding principles we must recognize:

1. The indisputable authority of the Talmud [69] and the determinative character of the Codes.

2. When a question is raised we must seek to understand the general aim and spirit [70] of the Law. This is to be accomplished by a profound and accurate research into the history of Jewish law, for without such studies no philosophy will amount to much, nor will mere sociological thinking do.

3. We should follow as a general rule the consensus of opinion of the codifiers.

4. In exceptional cases we should consider the advisability of following the minority view of the *Posekim.*

5. We should give thought not only to the legal aspect of the question, but also to Jewish sentiment and to the consequences of our decisions. As this point is so significant, I wish to illustrate what I mean by the following example. The question as to what our attitude should be toward traveling on the Sabbath in order to attend divine services has often been raised. There is no doubt that according to the strict meaning of the *halakah,* it is absolutely prohibited. Suppose we were to ignore the Law in this case on the ground that we would help people who live at a great distance from the synagogue to attend services? What would be the consequences of such a decision? Would it really promote greater interest in worship, would it create a deeper respect for the Sabbath, would it tend to promote the observance of Jewish law in general, or would not rather the opposite be the case?

6. We must bring to bear with full force the machinery of interpretation to contrive means to alleviate those who are the victims of Jewish laws. I have reference to some aspects of the law of divorce. We dare not remain indifferent to these problems. Neither will it be well to justify these hardships on the grounds that they are the culmination of a long historical process.

7. We must recognize that there are limits to genuine interpretation and that we cannot attempt to remedy all evils. "As I was rewarded for interpreting the Torah," said an ancient Rabbi, "so shall I be rewarded from abstaining therefrom." [71] For many situations are due to economic, political and social causes as beyond our control as are the movements of the planets. We could never permit shops to be open on Sabbath, and yet it is too much to expect an increase of Sabbath observance, as long as our economic system actually forces most of our people into desecrating the Sabbath.

8. We should take proper note of the fact that certain laws are obsolete, e.g., the law against shaving, because they do not meet with the approval of the people; yet we may not declare them null and void, as they are scriptural commands.

9. We should aim to interpret merely for American Jewry, and not for "catholic Israel" who, as Zangwill wittily re-

marked, is eternally protestant.

10. Finally, we must consider whether we should dedicate ourselves to the implacable ideal of consistency, or rather make occasional departures from our principles in particular instances. In an illuminating discussion of this point and its bearing upon modern law, Justice Cardozo says: "It is well enough to say we shall be consistent, but consistent with what? Shall it be consistency with the origins of the rule, the course and tendency of its development? Shall it be consistency with logic or philosophy in the fundamental conceptions of jurisprudence as disclosed by analysis of our own system? Are all these loyalties possible? Are there not times when we must bend symmetry, ignore history and sacrifice custom in pursuit of other and larger ends?"

Whatever we do, we must ever strive to cope with the problems of Jewish law in the spirit of Maimonides, Ibn Adret, R. Asher, Joseph Karo and R. Isaac Elhanan.

NOTES

47. For the authority of the Talmud cf. Kontros Ha-Teshubot, p. 17-26.
48. Cf. Ginzberg, Students, Saints and Scholars, p. 277, note 40, Yatzkan, Rabenu Eliyahu mi-Vilna, p. 101.
49. R. Joseph Karo was asked whether it was permissible to compel a community which had accepted Maimonides as an authority to follow the decisions of the Ri or other later rabbis. To this he replied that Maimonides was the greatest of the codifiers and that the communities in Palestine, Arabia and Northern Africa were guided by his code (Abkat Rokel, no. 32). R. Moses Benveniste received a letter from a scholar in Safed in 1653 who speaks of a large city with many scholars who accepted the Yad as their authority from time immemorial, cf. Pene Mosheh, I, 4.
50. Yoreh Deah, 242, 14.
51. Responsa, Leghorn 1652 no. 80. For Ibn Zimra's attitude towards the question of authority in Jewish Law cf. Zimmels in the Bericht des Juedischtheologischen Seminars, Breslau 1932, pp. 28-38.
52. Reshit Bikkurim, Frankfurt 1708, p. 27b.
53. Often the expression "and now (haidana) it is permitted" is used to imply that different conditions are prevailing, cf. for example R. H. 27a and Yoreh Deah, 159. Many other such passages were collected by I. Loew in H.U.C.A., XI, 1936, p. 193-206.
54. Cf. Tosafot, Abodah Zarah, 57b, s.v. leafuke and also 2a, s.v. asur.
55. Cf. Forbidden Foods, XI, 7 and his responsa, ed. Freimann, p. 350.
56. This Responsum is printed in Israel Salanter's Eben Israel, Warsaw 1883, pp. 90-92.
57. M. Git. IX, 8; cf. Juster, Les Juifs dans l'Empire Romain, II, 57, note 5.
58. Some of the more important are the "Kelalim" at the end of Moses Ibn Habib's Get Pashut, Benveniste's Kenesset-ha-Gedolah, Malachi Cohen's Yad Malachi; Lampronti's Pahad Yitzhak, Azulai's Yair Ozen, Elijah Hazan's Taalumot Leb, Palagi's Kol Ha-Hayyim and Medini's Sedeh Hemed.
59. Responsa 139, ed. Venice, 1519, p. 153a, cf. Yad Malachi, no. 144.
60. Prof. Ginzberg first called attention to a most remarkable passage which is unique in Jewish literature by an unknown chronicler to the effect that Moses used literary sources for the historical part of the Pentateuch cf. Legends VI, 48.
61. Driver, Sermons on the Old Testament, New York 1893, p. 146-147.
62. As was already noticed by Maimonides who in general anticipated the results of modern research in comparative religion, cf. More Nebukim, III, 33. This fact did not escape the attention of Robertson Smith, cf. Religion of the Semites, London 1914, p. 343.
63. Foundations of Belief, London 1895, p. 13.
64. Ginzberg, Students, Scholars and Saints, p. 105.
65. Cf. More Nebukim, III, 41.
66. Hadash Asur Min Ha-Torah. A play on Hadash meaning new grain and also innovations.
67. Sanhedrin, 101a.
68. Cf. Vinogradoff, Common Sense in Law, p. 122-127.
69. There are a few cases where the scholars consciously deviated from the Talmud. Thus, e.g. R. Hai decided contrary to Nedarim 27b that Asmakta is invalid (cf. Konteros ha-Teshubot, p. 19, note 5). Perhaps he did so because this treatise was redacted in Pumpeditha and consequently it enjoyed less authority than those who came from Sura, cf. Rabinowitz in Yerushalaim, ed. Lumcz, X, 1914, p. 252-253. Similarly, it is stated in Or Zarua, I, 88 that it is our custom to read Wa-Yehal on fast days which is not in accordance with the Talmud. Karo in his Responsa Abkat Rogel, no. 28 explained this deviation on the ground that a little more liberty is allowed with the liturgy than with the ritual law proper Issur we-Heter. In several instances we follow the minor treatises over against the Talmud (cf. the references given by Higger, Treatise Semahot, p. 11). But the Or Zarua (I, 754, p. 218b) insisted upon the prime authority of the Talmud. En passant, it may be remarked that Issurah included ethical laws as well, cf. Kesef Mishneh to Hilkot Deot, VI, 7.
70. Cf. Montesquieu, "Esprit des Lois."
71. Pes. 22b, cf. also the statement "there is need, but there is no remedy." in Ber. 15b and parallel passages, as well as R. Akiba's statement "do we draw an analogy between a case where there is an alternative and where there is none, Menahot, 82a and Tosafot, Bekorot, 56a, s.v. Umah; cf. also Yeb. 61b and Hul. 11b.